

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

VOLVO GM HEAVY TRUCK CORPORATION

and

Case No. 11-CA-17254

BILLY JOE ESTES, An Individual

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURE IMPLEMENT
WORKERS OF AMERICA, LOCAL 2069

and

Case No. 11-CB-2725

BILLY JOE ESTES, An Individual

Jasper Brown, Esq., of Winston-Salem,
for the General Counsel.

Tilghman B. Evans, Esq., of Bainbridge
Island, WA, and *Joel Merkel, Esq.*, of
Seattle, WA, for the Charging Party.

*William W. Thompson, II, Esq. (Zwerdling,
Paul, Leibig, Kahn, Thompson & Wolly, P.C.)*,
of Washington, D.C., for Respondent Union.

DECISION

Benjamin Schlesinger, Administrative Law Judge: On October 16, 1996, Volvo GM Heavy Truck Corporation ("Volvo") removed Charging Party Billy Joe Estes from his position of journeyman millwright and made him a utility line repairman at \$1.31 per hour less than what he had been making. The complaint alleges that Respondent International Union, United Automobile, Aerospace and Agriculture Implement Workers of America, Local 2069 ("Local" or "Union"), was responsible for that change of his job, acting arbitrarily, capriciously, and in bad faith in violation of Section 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act, 29 U.S.C.A. Section 151 et seq.¹

Volvo, a Delaware corporation, has a facility in Dublin, Virginia, where it manufactures heavy trucks. During the year preceding February 27, 1997, it received goods and materials at its Dublin facility from and shipped products to points outside Virginia, valued in excess of

¹ The relevant docket entries are as follows: Estes filed his charge against the Union on November 4, 1996, and the complaint issued on February 27, 1997. The hearing was held in Pulaski, Virginia, on February 23-25 and May 5, 1998. The hearing closed by my Order, dated May 13, 1998. On April 26, 1998, I granted Respondent Volvo's motion to dismiss the complaint in Case No. 11-CA- 17254 against it.

\$50,000. I conclude that Volvo is an employer within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Estes began to work at Volvo in 1988. On April 6, 1995, he applied for a journeyman millwright job in the maintenance department, a position that required applicants to possess a journeyman's card issued by the United Automobile, Aerospace and Agriculture Implement Workers of America ("International" or "UAW"), or the equivalent experience, essentially eight years at the trade. On May 15, he applied for his card, supported by three notarized letters of reference from previous employers who documented his experience in the millwright craft. The Local had a three-member² Skilled Trades Committee ("Committee"), co-chaired by Lind Farley, to review these applications at the local union level and then forward the records, ultimately, to the International, which made the final decision. The Committee approved Estes' paperwork. According to Farley,

I believe most of the [prior employers] that he [Estes] put on had either lost the paper, didn't have the records or were shut down and we looked at it and we felt based on the amount of time he had, he [sic] would give him the benefit of the doubt and send it on to the International Union.

His journeyman's application was then forwarded to the International's District and Regional offices, before being sent to the International for final approval. The International granted the card on November 6, 1995. In the meantime, Estes was awarded the maintenance department position and performed millwright work, even though he had not yet received his card. He performed that work without criticism and continued to perform that work, until he lost his card and Volvo refused to permit him to retain his job.

That resulted, the General Counsel claims, from Estes' union and protected and concerted activities. In June 1994, Estes had been elected to serve as alternate union committeeman for the second shift; and he continued to serve in that position after his promotion to millwright, filling in for the regular committeeman when he was unavailable. In December 1995, he began to assist employee James Palmer in processing his application for a journeyman's card as millwright, because otherwise Palmer was going to be laid off.³ Estes agreed, and he also later helped employees Robert Smith and Rodney Cook in their attempts to obtain journeyman's cards. After reviewing Palmer's documentation, including a journeyman's card from a Grand Lodge of the International Association of Machinists and Aerospace Workers Union in Baltimore, Estes asked Farley if he would review the application and qualification again. Farley said that he had already looked at the application and supporting papers and determined that they were not adequate. He instructed Estes to stay out of the process because

² Two members of the Committee were elected by the Local's membership; the other was appointed by the Local's president.

³ Estes testified that this occurred in March 1996. In light of the Committee's failure to approve Palmer's application in December 1995 and Farley's testimony that Estes was pursuing Palmer's claim in December, as well as the testimony of maintenance superintendent Brent Cooper, I find it probable that Estes began his activities earlier than he testified to. In making this and other credibility findings, I have fully reviewed the entire record and carefully observed the demeanor of all the witnesses. I have also taken into consideration the apparent interests of the witnesses; the inherent probabilities in light of other events; corroboration or the lack of it; the consistencies or inconsistencies within the testimony of each witness and between the testimony of each and that of other witnesses with similar apparent interests. See, generally, *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). Testimony in contradiction to that upon which my factual findings are based has been carefully considered but discredited. The credibility of testimony not deemed relevant to this Decision has not been considered.

he was not on the Committee and the review had been delegated solely to the Committee. In March, Estes asked regular second shift committeeman Jim Houchins to set up a meeting with management to discuss Palmer's and others' qualifications for the journeyman's position.

5 On March 22, Estes and Houchins met with Farley and Volvo's human resources manager Reider Singler and representative Jeannene Lambert, maintenance superintendent Brent Cooper, and acting plant manager Jim Cox. Farley explained the qualifications for a journeyman's card and what documentation was required. Estes wanted to know why Palmer, Smith, and Cook did not get their cards. Singler said that the meeting was not about those three
10 employees, but was intended for Estes and Houchins to get an understanding of the qualification process. Farley not only agreed that the two did not understand the process, but also accused Estes of telling the employees how to get cards fraudulently. Farley told Estes and Houchins to stay out of this issue: it was Farley's responsibility. Estes insisted that he was there to help and that he was not spreading false information, but Farley countered that Estes should
15 refer to Farley any employees who had questions regarding their applications for journeyman's cards.

Farley, concerned that Estes would not follow his advice and thinking that it would be better if someone from the International spoke with Estes, asked International representative
20 Ron Dannenhower to intervene. Dannenhower told Estes that he had heard that Estes was suggesting to employees to go to the Carpenters and Millwrights Union, Local 319 ("Carpenters") in Roanoke, Virginia, to get journeyman's cards. That was a disservice to the Local. The International did not care where the journeyman's card came from: if it did not meet the requirements of the UAW program, it would not gain anything for the employee.⁴ If Estes
25 was advising employees in that way, he should stop it. Estes denied that he was doing so.⁵ Then Dannenhower gave Estes a document spelling out the UAW's requirements for a journeyman's card and advised him to give that information to any person that requested information. If the person needed additional information, Estes was to refer that person to the
30 Committee.

In early May, some of the employees asked Estes to run against Farley as chairman of the Committee. Estes accepted the nomination on May 13; and, when Farley asked that day if he knew of anyone who was going to challenge him for his job on the Committee, Estes told that
35 he was going to run just to keep Farley honest. Later that day, when Estes came to the area of the plant that the union officials used to conduct some of their functions, he was shown a letter, dated that day, from Farley to Mary Riordan, a representative of the International's Skilled Trades Department ("Department"), the entity that investigates and approves applications for journeyman's cards. The letter stated that Farley had reviewed Estes' credentials, that he had determined that there was more than adequate evidence that Estes had made fraudulent claims
40 in supporting his own application, and that he requested an investigation by the Department.

⁴ The rules of the International provide: "Letters or journeyman cards from other unions are *not* accepted as proof of time in the trade." (Emphasis in original.) Estes did not believe this, no matter how many times he was told. Thus, he complained of Farley's arbitrary reasons for the rejection of Palmer and
45 others: "Some of these rejected applicants had been awarded technical degrees or were licensed as masters in their trades through the Commonwealth of Virginia. Others demonstrated completion of a state apprenticeship program or contractor's licenses."

⁵ This was untrue. Estes was later to defend himself: "There was also the additional charge that I aided or encouraged UAW Skilled Trades applicants to take advantage of "loopholes", to circumvent entry requirements. In fact I was advising Union members on how to establish legitimate credentials in Skilled Trades by obtaining an AFL-CIO card. I passed the AFL-CIO exam for millwright and hold such a card, honored in all 50 states."

Estes testified in this proceeding that he read the letter, called Farley at his home, and asked what fraudulent claims Farley was accusing him of having made. Farley, according to Estes' testimony, told him he would find out when charges were brought, adding that: "[I]f you hadn't caused me any trouble I wouldn't be causing you any trouble." His narration of this conversation in a letter appealing the International's revocation of his card was quite different. There, he stated only that he asked Farley why he was bringing charges against Estes, and Farley replied: "[I]f you hadn't caused problems for me, you wouldn't be having problems now." Farley denied making either statement.

Riordan wrote Estes on May 24 that he was accused of having possibly obtained his journeyman's card fraudulently and informed him that an investigation would be conducted to determine the validity of the claim. By letter dated August 20, Riordan requested that Estes supply copies of tax forms for certain years. Although Estes received all other mail from the International, he denied receiving this letter. On October 16, Riordan wrote to Estes, revoking his journeyman's card, effective that day, relying, in part, on Estes' failure to supply the proof that she requested in her August 20 letter; and Volvo removed Estes from his position in the maintenance department. Estes then requested that letter from Local President John Sayers, who provided it about a week later.⁶

The General Counsel contends that Farley discriminated against Estes because he was running for the office that Farley held (union activities) and because he was representing Palmer, Smith, and Cook in attempting to obtain journeyman's cards (protected and concerted activities). The General Counsel further contends that the following show that Farley was hostile to Estes: (1) When Volvo posted the vacancy of the position from which he had just been removed, Lambert (Estes testified) told him that he had been accepted for the position but Farley opposed his maintenance of the job while Estes appealed his loss of his card under the International's appeals procedure. (This was partially true. Lambert did not accept Estes for the position from which Volvo had just removed him. Estes' testimony makes no sense. However, the Local took the position that Estes should remain in his job while he appealed. Farley opposed that position.) (2) In early January 1997, Estes requested that Houchins get some information from Farley. When Farley asked Houchins why he needed the information, he answered that he was getting the information for Estes, at which point Farley threatened that he had better watch helping Estes, that "he's going to take you down with him when he goes." This, the General Counsel insists, demonstrates Farley's animus and constituted an unlawful threat. Farley admitted telling Houchins only that he had better be careful. Farley explained that what he had meant was that he did not feel that Estes was trustworthy, that people had worked hard to promote the skilled trades in the plant, but that Estes had done everything he could to dismember it, and that Houchins as a Union committeeman would lose credibility if he supported Estes.

There are a variety of problems with the General Counsel's complaint, not the least of which is that the charge (and thus the complaint) was filed, in part, against the wrong party. The complaint seeks the restoration of Estes' journeyman's card, but the card was taken away by the International, not the Local. Indeed, the card belonged to the UAW, as noted on the application that Estes signed:

⁶ I am persuaded that Estes received the August 20 letter, but ignored it. He ignored both written and oral requests for similar supporting documents throughout the time that Farley and the Department were looking into the legitimacy of his original application.

ANY JOURNEYMAN CARD ISSUED IS THE PROPERTY OF THE INTERNATIONAL UNION, UAW, AND MAY BE REVOKED FOR GOOD AND SUFFICIENT REASON SUCH AS FAILURE TO MAINTAIN MEMBERSHIP IN GOOD STANDING WHILE WORKING IN A UAW PLANT, AND FALSIFICATION OF APPLICATION INFORMATION.

There is no evidence here that the Local did anything more than institute the investigation about whether Estes obtained his card fraudulently. Farley made his recommendation for a further investigation to Riordan, and it was Riordan, on behalf of the International, who ultimately made the decision. Thus, I could not under any circumstances order the Local to restore Estes' card.

Although this conclusion limits the kind of relief that may be afforded to Estes, should I find the complaint otherwise sustained, it does not relieve the Union of all responsibility. Farley, with the concurrent suggestion of Cooper, initiated the investigation; and the issue is whether he did so because of Estes' union or protected or concerted activities, in violation of the Act. I find that he did not. Farley's suspicions began in early 1996, and he mentioned to Cooper that Estes was trying to help some of the employees secure documentation for their journeyman's cards and that much of the documentation was unable to pass closer scrutiny. He specifically mentioned Palmer and Smith. In early April, Farley again expressed his exasperation to Cooper about the credentials of the applicants, and Smith's name was raised. He had applied for a machinist's card, but there were no openings for machinist at that time. Then, a millwright's job was posted; and Smith applied, claiming that he also met the criteria for a millwright and was trying to secure documentation for that proof of experience. In addition, he had recently secured, for a fee, a journeyman's card from the Carpenters. Farley believed, correctly, it turns out,⁷ that Estes and Smith had jointly traveled to that local and that both paid to obtain cards. In talking about how to verify some of the information that was being given by the applicants, Cooper and Farley thought of looking at Volvo's personnel files for the job applications that they had filled out; and, while doing so, they ought to look at Estes' file, too, because the problems that they were having came from people whose applications Estes was supporting. For example, Palmer wanted credit for craft work and experience for a period when he was not doing that work, but was acting as a supervisor. (Some thought was given to the fact that Estes had also paid for a card from the Carpenters lodge, despite the fact that he already possessed a UAW card.)

So, they looked. And they found that in 1988 Estes had made an application for a job in Volvo's paint shop, listing as part of his qualifications that he was a body shop foreman at Shelor Chevrolet. But, referring to Estes' application for the millwright card, Estes reported that he had been a millwright at Mineco during the same period of time. Farley was alarmed at the discrepancy and decided to see if there were other discrepancies that turned up; and that was what started his review of Estes' original application. A number of additional errors appeared, one of which involved Estes' work as an employee of Mineco. Although he had submitted support for six and one-half years of millwright work, the employer's statement added: "The company employees were all U.M.W. Union Members and were required to qualify in their trades." Upon review, Farley found that Estes had been a member of the Mineworkers for only seven months and, thus, could not have worked for more than six years. The credit that he sought was vastly overstated. As a result, Farley requested that Riordan conduct an investigation.

⁷ In fact, Estes suggested that Smith apply for a card from the Carpenters, at a cost of \$300 or more, and drove him to Roanoke.

Farley drafted his letter to Riordan the weekend before Estes told him that he was going to run for Farley's position and left it for his secretary for typing on Monday morning, hours before Estes told him that he was going to run. Estes had not announced to anyone beforehand that he intended to run for election. He had not even made up his mind to run, before Farley commenced his investigation. There is in the record correspondence that Farley prepared in the course of his investigation that preceded Estes' May 13 decision. Although it may have been more than fortuitous that Farley's letter turned up in a public area and may have been posted,⁸ there was no proof that Farley had anything to do with that. In light of the earlier start of his investigation, the distribution of the letter had nothing to do with Estes' decision to run for office. Nor were Farley's actions *caused* by Estes' support for the applications of the other three employees or his advocacy of a position contrary to what Volvo and the International bargained for. The investigation resulted from Farley's and Cooper's suspicions that Estes was sponsoring false and exaggerated applications of other employees and was thus capable of exaggerating his own application.⁹ That is unrelated to any protected and concerted activity and does not violate the Act. Accordingly, I conclude that these allegations should be dismissed.

I also dismiss the Section 8(a)(1) allegation. Houchins was a supporter of Estes and, in addition to his bias, evidenced a difficulty in understanding what was being said to him. Sometimes witnesses do not understand questions posed to them by counsel. Sometimes that happens more frequently with some witnesses than others, often caused by counsels' (or judges') questions that are less than artful. But, here, Houchins repeatedly answered questions that were readily understandable with the answer that he did not understand them. And the question is whether he was able to recall clearly what Farley told him. I find that he was not and credit Farley. His statement that Houchins had "better be careful" was intended to warn him away from his support of Estes. Yet I also find that this did not violate the Act. Farley was only a co-chairman of the Committee. He had no power over Houchins, who was also an elected Local representative. There is nothing in the record to show that Farley was empowered to affect Houchins' rights as a Union member, a committeeman of the second shift, or employee. Accordingly, whatever Farley may have meant, his statement could not, in these circumstances, constitute a threat in violation of Section 8(a)(1) of the Act, as the complaint alleges.

In light of these findings and conclusions finding no violation against the Local, it is unnecessary to expand on my earlier ruling dismissing the complaint against Volvo. That ruling, which was based on the failure of the General Counsel's to show during his direct case that Volvo was aware of Estes' alleged union or protected and concerted activities, is now bolstered by my rulings that the Union did nothing improper herein. To the extent that the General Counsel contends in his brief that evidence brought forward during the presentation of the Union's case corrects the record by showing that Volvo had some knowledge, the evidence was submitted after I had dismissed the complaint against Volvo and cannot be used to make up for the General Counsel's original omission. Finally, in light of my conclusions, I find it unnecessary to consider the Local's defense that I should defer to the finding of the UAW's Public Review Board, which determined that Estes had not shown sufficient proof of work experience to warrant the restoration of his journeyman's card.

⁸ Sayers denied seeing it posted.

⁹ Estes testified that he obtained the Carpenters card because his father thought little of the questions that the UAW asked for him to qualify for a journeyman's card and challenged him to pass the millwright's test that the Carpenters gave. That cost Estes \$300 or more, plus monthly dues. I find his explanation doubtful at best. Furthermore, in light of Estes' differing recollections of his telephone conversation with Farley on May 13, and Farley's denials of both of Estes' versions, I am unconvinced that Farley made the statements that Estes attributed to him.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰

ORDER

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The complaint is dismissed.

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Dated: Washington, DC, October 2, 1998

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Benjamin Schlesinger
Administrative Law Judge

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¹⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.